



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 075 50646

Office: TEXAS SERVICE CENTER Date:

SEP 27 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a computer systems manufacturer. It seeks to employ the beneficiary permanently in the United States as a system engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the petitioner applied and denied the position accordingly.

On appeal, counsel submits a statement.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part:

“Professional means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

Professionals. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

If the petition is for a professional pursuant to 8 C.F.R. § 204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on November 2, 2000. The Form ETA 750 states that the proffered position requires a bachelor of science in computer science and one and one half years in the proffered position.

With the petition, the petitioner submitted no evidence pertinent to the beneficiary's education and no evidence pertinent to the beneficiary's employment experience. On July 2, 2003, the Texas Service Center requested evidence pertinent to the beneficiary's education.

In response, the petitioner provided a copy of a certificate in computer science and data processing awarded to the beneficiary by the Baden-Wurtemberg College of Advanced Vocational Studies in Mannheim, Germany and a transcript of his coursework there.

On July 24, 2003, the Director, Texas Service Center, issued a Notice of Intent to Deny in this matter. In that notice, the director requested, *inter alia*, a credible evaluation of the beneficiary's transcripts performed by a qualified evaluator.

In response, the petitioner submitted an educational evaluation dated December 6, 1998. That evaluation stated that the beneficiary's education and work experience, taken together, are the equivalent of a U.S. bachelor's degree in computer science. That evaluation also stated that the beneficiary's education, by itself, is the equivalent of a U.S. associates of science degree in computer technology.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on August 14, 2003, denied the petition.

On appeal, counsel states,

The denial of the I-140 petition was in error. The sole grounds for denial is that the beneficiary does not meet the educational requirements for the position. The Labor Certification Underlying the petition requires a Bachelor of Science degree. The beneficiary has educational credentials, awarded in Germany, that is (sic) the educational equivalent of the Bachelor of Science degree. He therefore qualifies for the position set forth in the labor cert and in the I-140.

Factual detail and legal argument in brief to follow.

No further information, argument, or documentation has been received.

Counsel is apparently incorrect in stating that the beneficiary's German education is the equivalent of a U.S. bachelor's degree. The beneficiary took 20 classes at Baden-Wurttemberg College of Advanced Vocational Studies and wrote a dissertation. That amount of class work is consistent with a two-year course of study, whereas a U.S. bachelor's degree ordinarily requires four years to complete. Further, the educational evaluation commissioned by the petitioner and submitted in support of this petition states that the beneficiary's German degree is equivalent to an associates degree, which is a two-year degree and inferior to a bachelor's degree. The petitioner submitted no evidence of any other education received by the beneficiary.

That evaluation states that the beneficiary's education, together with his work experience, is equivalent to a bachelor's degree. That assertion, however, is inapposite. The regulations pertinent to nonimmigrant petitions explicitly permit the substitution of experience for education and degree. The laws and regulations applicable to the visa category in the instant case sanction no such substitution of experience, in whole or in part, for the requisite bachelor's degree.

In this case, the labor certification, prepared and filed by the petitioner, clearly requires a bachelor's degree in computer science. The evidence submitted does not demonstrate that the beneficiary has such a degree. Therefore, the instant petition, submitted pursuant to 8 C.F.R. §204.5(l), may not be approved.

Beyond the decision of the director, this office notes that the petitioner provided no employment verification letters to demonstrate that the beneficiary has the requisite employment experience. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states that,

Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The petitioner provided no such evidence, and the petition should also have been denied on that ground. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.